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September 4, 2003

To: Members of the School Renewal Commission

From: Madalyn Quinlan, Chief of Staff

Subject: Constitutional Provisions and Statutory Duties related to Education Governance
Discussion on September 8, 2003

One of the agenda items for the School Renewal Commission meeting on September 8th is Education Governance. Included in this document are the sections of the Montana Constitution and Montana State Statute that are most relevant to the discussion of Education Governance.

This document includes:

- Constitution of Montana -- Article VI – The Executive
- Constitution of Montana -- Article X – Education and Public Lands

- Statutes related to the Montana State Board of Education
20-2-101

- Statutes related to the Board of Public Education
20-2-115
20-2-121
20-9-344
20-8-111
20-10-111

- Statutes related to the Superintendent of Public Instruction
20-3-105
20-3-106
20-9-346
20-9-369
20-7-301
20-7-403
20-7-502
20-10-112

- Statutes related to the County Superintendent
20-3-205
20-3-206
20-3-207

- Statutes related to the Board of Trustees
1-2-113
20-3-301
20-3-324
20-9-213
20-10-107
20-10-204

Constitution of Montana -- Article VI -- THE EXECUTIVE

Section 1. Officers. (1) The executive branch includes a governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor.

(2) Each holds office for a term of four years which begins on the first Monday of January next succeeding election, and until a successor is elected and qualified.

(3) Each shall reside at the seat of government, there keep the public records of his office, and perform such other duties as are provided in this constitution and by law.

Section 2. Election. (1) The governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor shall be elected by the qualified electors at a general election provided by law.

(2) Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections, or so otherwise comply with nomination procedures provided by law that the offices of governor and lieutenant governor are voted upon together in primary and general elections.

Constitution of Montana -- Article X -- EDUCATION AND PUBLIC LANDS

Section 1. Educational goals and duties. (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

Section 2. Public school fund. The public school fund of the state shall consist of:

(1) Proceeds from the school lands which have been or may hereafter be granted by the United States,

(2) Lands granted in lieu thereof,

(3) Lands given or granted by any person or corporation under any law or grant of the United States,

(4) All other grants of land or money made from the United States for general educational purposes or without special purpose,

(5) All interests in estates that escheat to the state,

(6) All unclaimed shares and dividends of any corporation incorporated in the state,

(7) All other grants, gifts, devises or bequests made to the state for general educational purposes.

Section 3. Public school fund inviolate. The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion.

Section 4. Board of land commissioners. The governor, superintendent of public instruction, auditor, secretary of state, and attorney general constitute the board of land commissioners. It has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law.

Section 5. Public school fund revenue. (1) Ninety-five percent of all the interest received on the public school fund and ninety-five percent of all rent received from the leasing of school lands and all other income from the public school fund shall be equitably apportioned annually to public elementary and

secondary school districts as provided by law.

(2) The remaining five percent of all interest received on the public school fund, and the remaining five percent of all rent received from the leasing of school lands and all other income from the public school fund shall annually be added to the public school fund and become and forever remain an inseparable and inviolable part thereof.

Section 6. Aid prohibited to sectarian schools. (1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.

(2) This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.

Section 7. Nondiscrimination in education. No religious or partisan test or qualification shall be required of any teacher or student as a condition of admission into any public educational institution. Attendance shall not be required at any religious service. No sectarian tenets shall be advocated in any public educational institution of the state. No person shall be refused admission to any public educational institution on account of sex, race, creed, religion, political beliefs, or national origin.

Section 8. School district trustees. The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

Section 9. Boards of education. (1) There is a state board of education composed of the board of regents of higher education and the board of public education. It is responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may be broken by the governor, who is an ex officio member of each component board.

(2) (a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are ex officio non-voting members of the board.

(c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

(d) The funds and appropriations under the control of the board of regents are subject to the same audit provisions as are all other state funds.

(3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board.

Section 10. State university funds. The funds of the Montana university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.

Section 11. Public land trust, disposition. (1) All lands of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised.

(2) No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

(3) No land which the state holds by grant from the United States which prescribes the manner of disposal and minimum price shall be disposed of except in the manner and for at least the price prescribed without the consent of the United States.

(4) All public land shall be classified by the board of land commissioners in a manner provided by law. Any public land may be exchanged for other land, public or private, which is equal in value and, as closely as possible, equal in area.

MONTANA STATE BOARD OF EDUCATION

20-2-101. Combined boards as state board -- budget review -- officers -- meetings -- quorum. (1)

The board of public education and the board of regents meeting together as the state board of education shall be responsible for long-range planning and for coordinating and evaluating policies and programs for the public educational systems of the state. The state board of education shall review and unify the budget requests of educational entities assigned by law to the board of public education, the board of regents, or the state board of education and shall submit a unified budget request with recommendations to the appropriate state agency.

(2) The governor is the president of, the superintendent of public instruction is the secretary to, and the commissioner shall be a nonvoting participant at all meetings of the state board of education.

(3) The state board of education may select a member to chair its meetings in the absence of the governor.

(4) A tie vote at any meeting may be broken by the governor.

(5) A majority of members appointed to the board of public education and the board of regents shall constitute a quorum for transaction of business as the state board of education.

(6) The board of public education and the board of regents shall meet at least twice yearly as the state board of education.

(7) Other meetings of the state board of education may be called by the governor, by both the secretary to the board of public education and the secretary to the board of regents, or by joint action of eight appointed members, four each from the board of public education and the board of regents. All meetings of the state board of education shall be for the purposes set forth in subsection (1) above or for the purpose of considering other matters of common concern to the board of public education and the board of regents, but the state board of education may not exercise the powers and duties assigned by the 1972 Montana constitution and by law to the board of public education and the board of regents.

BOARD OF PUBLIC EDUCATION

20-2-115. Rules with substantial financial impact -- fiscal note -- effect without funding. (1) When developing rules, policies, and standards under [20-2-121](#)(6), (7), (9), and (11), the board of public education shall determine the financial impact of the rule, policy, or standard on school districts.

(2) The superintendent of public instruction shall prepare a fiscal note for submission to the board, using criteria and assumptions developed by the board. The fiscal note must be prepared within 30 days of a request unless the board agrees to a longer time. The board may also accept other testimony and exhibits on the financial impact to school districts before proceeding to rulemaking.

(3) If the financial impact of the proposed rule, policy, or standard is found by the board to be substantial, the board may not implement the rule until July 1 following the next regular legislative session and shall request the next legislature to fund implementation of the proposed rule, policy, or standard through the BASE funding program. A substantial financial impact is an amount that cannot be readily absorbed in the budget of an existing school district program.

(4) A proposed rule, policy, or standard not found by the board to have a substantial financial impact on school districts or funded by the legislature may be implemented at any time.

20-2-121. Board of public education -- powers and duties. The board of public education shall:

(1) effect an orderly and uniform system for teacher certification and specialist certification and for the issuance of an emergency authorization of employment by adopting the policies prescribed by [20-4-102](#) and [20-4-111](#);

(2) consider the suspension or revocation of teacher or specialist certificates and appeals from the denial of teacher or specialist certification in accordance with the provisions of [20-4-110](#);

(3) administer and order the distribution of BASE aid in accordance with the provisions of [20-9-344](#);

(4) adopt and enforce policies to provide uniform standards and regulations for the design, construction, and operation of school buses in accordance with the provisions of [20-10-111](#);

(5) approve or disapprove a reduction of the number of hours in a district's school day in accordance with the provisions of [20-1-302](#);

(6) adopt policies prescribing the conditions when school may be conducted on Saturday and the types of pupil-instruction-related days and approval procedure for such days in accordance with the provisions of [20-1-303](#) and [20-1-304](#);

(7) adopt standards of accreditation and establish the accreditation status of every school in accordance with the provisions of [20-7-101](#) and [20-7-102](#);

(8) approve or disapprove educational media selected by the superintendent of public instruction for the educational media library in accordance with the provisions of [20-7-201](#);

(9) adopt policies for the conduct of special education in accordance with the provisions of [20-7-402](#);

(10) adopt rules for issuance of documents certifying equivalency of completion of secondary education in accordance with [20-7-131](#);

(11) adopt policies for the conduct of programs for gifted and talented children in accordance with the provisions of [20-7-903](#) and [20-7-904](#);

(12) adopt rules for student assessment in the public schools; and

(13) perform any other duty prescribed from time to time by this title or any other act of the legislature.

20-9-344. Duties of board of public education for distribution of BASE aid. (1) The board of public education shall administer and distribute the BASE aid and state advances for county equalization in the manner and with the powers and duties provided by law. To this end, the board of public education shall:

(a) adopt policies for regulating the distribution of BASE aid and state advances for county equalization in accordance with the provisions of law;

(b) have the power to require reports from the county superintendents, budget boards, county treasurers, and trustees as it considers necessary; and

(c) order the superintendent of public instruction to distribute the BASE aid on the basis of each district's annual entitlement to the aid as established by the superintendent of public instruction. In ordering the distribution of BASE aid, the board of public education may not increase or decrease the BASE aid distribution to any district on account of any difference that may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

(2) The board of public education may order the superintendent of public instruction to withhold

distribution of BASE aid from a district when the district fails to:

- (a) submit reports or budgets as required by law or rules adopted by the board of public education; or
- (b) maintain accredited status.

(3) Prior to any proposed order by the board of public education to withhold distribution of BASE aid or county equalization money, the district is entitled to a contested case hearing before the board of public education, as provided under the Montana Administrative Procedure Act.

(4) If a district or county receives more BASE aid than it is entitled to, the county treasurer shall return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the superintendent of public instruction.

(5) Except as provided in [20-9-347\(2\)](#), the BASE aid payment must be distributed according to the following schedule:

- (a) from August to October of the school fiscal year, 10% of the direct state aid to each district;
 - (b) from December to April of the school fiscal year, 10% of the direct state aid to each district;
 - (c) in November of the school fiscal year, one-half of the guaranteed tax base aid payment to each district or county that has submitted a final budget to the superintendent of public instruction in accordance with the provisions of [20-9-134](#);
 - (d) in May of the school fiscal year, the remainder of the guaranteed tax base aid payment to each district or county; and
 - (e) in June of the school fiscal year, the remaining payment to each district of direct state aid.
- (6) The distribution provided for in subsection (5) must occur by the last working day of each month.

20-8-111. Duty of board of public education as to property of school. The board of public education shall, either directly or through a contract with a nonprofit corporation, receive, hold, manage, use, and dispose of real and personal property transferred to the board or to the state of Montana by purchase, gift, devise, or bequest or otherwise acquired and the proceeds, interest, and income of the property for the use and benefit of the school for the deaf and blind. All donations, gifts, devises, or grants vest in the board or its designee, as trustee for the state of Montana, for the use and benefit of the school and its students.

20-10-111. Duties of board of public education. (1) The board of public education, with the advice of the Montana department of justice and the superintendent of public instruction, shall adopt and enforce policies, not inconsistent with the motor vehicle laws, to provide uniform standards and regulations for the design, construction, and operation of school buses in the state of Montana. The policies must:

- (a) prescribe minimum standards for the design, construction, and operation of school buses consistent with:
 - (i) the recommendations adopted by the national conference on school transportation; and
 - (ii) the federal motor vehicle safety standards;
- (b) prescribe standards and specifications for the lighting equipment and special warning devices to be carried by school buses in conformity with:
 - (i) current specifications approved by the society of automobile engineers;
 - (ii) motor vehicle laws; and
 - (iii) the requirement that all school buses have an alternately flashing prewarning lighting system of four amber signal lamps to be used while preparing to stop and an alternately flashing warning lighting system of four red signal lamps to be used while stopped in accordance with [61-9-402](#);
- (c) establish other driver qualifications considered necessary in addition to the qualifications required in [20-10-103](#);
- (d) prescribe criteria for the establishment of transportation service areas for school bus purposes by the county transportation committee that shall allow for the establishment of service areas without regard to the district boundary lines within the county;
- (e) prescribe other criteria for the determination of the residence of a pupil that may be considered necessary in addition to the criteria established in [20-10-105](#); and
- (f) prescribe standards for the measurement of the child seating capacity of school buses, to be known as the rated capacity.

(2) The board of public education shall prescribe other policies necessary for the proper administration and operation of individual transportation programs that are consistent with the transportation provisions of this title.

SUPERINTENDENT OF PUBLIC INSTRUCTION

20-3-105. Administrative powers and duties. In administering the affairs of his office, the superintendent of public instruction shall have the power and it shall be his duty to:

(1) keep a record of his official acts and all documents applicable to the administration of the office, preserve all official reports submitted to him for the period required by law, and surrender them to his successor at the expiration of his term;

(2) preserve all books, educational media, instructional equipment, and any other articles of educational interest and value which come into his possession and surrender them to his successor at the expiration of his term;

(3) cause the printing and distribution of all reports and forms necessary for the proper conduct of business by a district or school in the manner prescribed by the provisions of this title;

(4) provide and keep an official seal of the superintendent of public instruction by which his official acts shall be authenticated;

(5) if he deems necessary, cause the printing of a complete and updated volume of the school laws of the state, which shall be offered and sold at cost of the printing and shipping to any school official or other person;

(6) whenever a replacement volume is not printed under the provisions of subsection (5), cause the printing of a cumulative supplement to the most recent volume of school laws immediately after the conclusion of any session of the legislature at which new school laws or amendments to the school laws were adopted. It shall be offered and sold at cost of the printing and shipping to any school official or other person.

(7) if deemed necessary, publish a biennial report of the superintendent of public instruction;

(8) counsel with and advise county superintendents on matters involving the welfare of the schools and, when requested, give a county superintendent a written answer to any question concerning school law;

(9) call an annual meeting of the county superintendents when he deems it advisable;

(10) as far as he shall find it practicable, address public assemblies on subjects pertaining to education in Montana; and

(11) faithfully work in all practical and possible ways for the welfare of the public schools of the state.

20-3-106. Supervision of schools -- powers and duties. The superintendent of public instruction has the general supervision of the public schools and districts of the state and shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of [20-3-362](#);

(2) issue, renew, or deny teacher certification and emergency authorizations of employment;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of [20-5-314](#);

(4) approve or disapprove the opening or reopening of a school in accordance with the provisions of [20-6-502](#), [20-6-503](#), [20-6-504](#), or [20-6-505](#);

(5) approve or disapprove school isolation within the limitations prescribed by [20-9-302](#);

(6) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of [20-9-102](#) and prescribe the school budget format in accordance with the provisions of [20-9-103](#) and [20-9-506](#);

(7) establish a system of communication for calculating joint district revenue in accordance with the provisions of [20-9-151](#);

(8) approve or disapprove the adoption of a district's budget amendment resolution under the conditions prescribed in [20-9-163](#) and adopt rules for an application for additional direct state aid for a budget amendment in accordance with the approval and disbursement provisions of [20-9-166](#);

(9) generally supervise the school financial administration provisions as prescribed by [20-9-201](#)(2);

(10) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of [20-9-213](#)(6) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of [20-3-209](#);

(11) approve, disapprove, or adjust an increase of the average number belonging (ANB) in

accordance with the provisions of [20-9-313](#) and [20-9-314](#);

(12) distribute BASE aid and special education allowable cost payments in support of the BASE funding program in accordance with the provisions of [20-9-331](#), [20-9-333](#), [20-9-342](#), [20-9-346](#), [20-9-347](#), and [20-9-366](#) through [20-9-369](#);

(13) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of [20-10-112](#);

(14) request, accept, deposit, and expend federal money in accordance with the provisions of [20-9-603](#);

(15) authorize the use of federal money for the support of an interlocal cooperative agreement in accordance with the provisions of [20-9-703](#) and [20-9-704](#);

(16) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of [20-9-705](#);

(17) approve or disapprove the conduct of school on a Saturday in accordance with the provisions of [20-1-303](#);

(18) recommend standards of accreditation for all schools to the board of public education and evaluate compliance with the standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of [20-7-101](#) and [20-7-102](#);

(19) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of [20-7-113](#) and [20-7-114](#);

(20) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of [20-7-201](#);

(21) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

(22) as the governing agent and executive officer of the state of Montana for K-12 career and vocational/technical education, adopt the policies prescribed by and in accordance with the provisions of [20-7-301](#);

(23) supervise and coordinate the conduct of special education in the state in accordance with the provisions of [20-7-403](#);

(24) administer the traffic education program in accordance with the provisions of [20-7-502](#);

(25) administer the school food services program in accordance with the provisions of [20-10-201](#) through [20-10-203](#);

(26) review school building plans and specifications in accordance with the provisions of [20-6-622](#);

(27) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of [20-1-408](#);

(28) provide schools with information and technical assistance for compliance with the student assessment rules provided for in [20-2-121](#) and collect and summarize the results of the student assessment for the board of public education and the legislature;

(29) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties all school district student assessment data for a test required by the board of public education;

(30) administer the distribution of guaranteed tax base aid in accordance with [20-9-366](#) through [20-9-369](#); and

(31) perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education.

20-9-346. Duties of superintendent of public instruction for state and county equalization aid distribution. The superintendent of public instruction shall administer the distribution of the state and county equalization aid by:

(1) establishing the annual entitlement of each district and county to state and county equalization aid, based on the data reported in the retirement, general fund, and debt service fund budgets for each district that have been adopted for the current school fiscal year and verified by the superintendent of public instruction;

(2) for the purposes of state advances and reimbursements for school facilities, limiting the distribution to no more than the amount appropriated for the school fiscal year to the districts that are eligible under the provisions of [20-9-366](#) through [20-9-371](#) by:

(a) determining the debt service payment obligation in each district for debt service on bonds that were

sold as provided in [20-9-370](#)(3) that qualify for a state advance or reimbursement for school facilities under the provisions of [20-9-366](#) through [20-9-369](#) and [20-9-370](#);

(b) based on the limitation of state equalization aid appropriated for debt service purposes, determining the state advance for school facilities and the proportionate share of state reimbursement for school facilities that each eligible district must receive for the school fiscal year; and

(c) distributing that amount by May 31 of each school fiscal year to each eligible district for reducing the property tax for the debt service fund for the ensuing school fiscal year;

(3) distributing by electronic transfer the BASE aid and state advances for county equalization, for each district or county entitled to the aid, to the county treasurer of the respective county for county equalization or to the county treasurer of the county where the district is located or to the investment account identified by the applicable district for BASE aid, in accordance with the distribution ordered by the board of public education;

(4) keeping a record of the full and complete data concerning money available for state equalization aid, state advances for county equalization, and the entitlements for BASE aid of the districts of the state;

(5) reporting to the board of public education the estimated amount that will be available for state equalization aid; and

(6) reporting to the office of budget and program planning, as provided in [17-7-111](#):

(a) the figures and data available concerning distributions of state and county equalization aid during the preceding 2 school fiscal years;

(b) the amount of state equalization aid then available;

(c) the apportionment made of the available money but not yet distributed;

(d) the latest estimate of accruals of money available for state equalization aid; and

(e) the amount of state advances and repayment for county equalization.

20-9-369. Duties of superintendent of public instruction and department of revenue. (1) The superintendent of public instruction shall administer the distribution of guaranteed tax base aid by:

(a) providing each school district and county superintendent, by March 1 of each year, with the preliminary statewide and district guaranteed tax base ratios and, by May 1 of each year, with the final statewide and district guaranteed tax base ratios, for use in calculating the guaranteed tax base aid available for the ensuing school fiscal year;

(b) providing each school district and county superintendent, by March 1 of each year, with the preliminary statewide, county, and district mill values per ANB and, by May 1 of each year, with the final statewide, county, and district mill values per ANB, for use in calculating the guaranteed tax base aid and state advance and reimbursement for school facilities available to counties and districts for the ensuing school fiscal year;

(c) requiring each county and district that qualifies and applies for guaranteed tax base aid to report to the county superintendent all budget and accounting information required to administer the guaranteed tax base aid;

(d) keeping a record of the complete data concerning appropriations available for guaranteed tax base aid and the entitlements for the aid of the counties and districts that qualify;

(e) distributing the guaranteed tax base aid entitlement to each qualified county or district from the appropriations for that purpose.

(2) The superintendent shall adopt rules necessary to implement [20-9-366](#) through [20-9-369](#).

(3) The department of revenue shall provide the superintendent of public instruction by December 1 of each year a final determination of the taxable value of property within each school district and county of the state reported to the department of revenue based on information delivered to the county clerk and recorder as required in [15-10-305](#).

(4) The superintendent of public instruction shall calculate the district and statewide guaranteed tax base ratios by applying the prior year's direct state aid payment.

20-7-301. Duties of superintendent of public instruction. The superintendent of public instruction is the governing agent and executive officer of the state of Montana for K-12 career and vocational/technical education. The superintendent of public instruction shall adopt and administer policies to effect the orderly development of a system of K-12 career and vocational/technical education that is adaptable to changing needs, controlled to prevent unnecessary duplication, coordinated with federal guidelines and requirements for K-12 career and vocational/technical education, and funded to ensure growth and quality

programming. In order to accomplish the orderly development of a system of K-12 career and vocational/technical education, the policies adopted by the superintendent of public instruction must include:

- (1) a state plan for development of the system;
- (2) standards for K-12 career and vocational/technical education courses and programs;
- (3) a review process for the establishment and deletion of programs;
- (4) instructor qualifications for K-12 career and vocational/technical education courses and programs;
- (5) criteria for approval of K-12 career and vocational/technical education courses and programs;
- (6) a basis for apportionment of all money appropriated by the legislature for K-12 career and vocational/technical education in accordance with the intent of the legislature as reflected in the terms of the appropriation;
- (7) a basis for apportionment of all money received by the state of Montana for K-12 career and vocational/technical education from the federal government in accordance with the acts of congress;
- (8) a system of evaluation of K-12 career and vocational/technical education that allows for consideration of the current and projected workforce needs and job opportunities; and
- (9) any other policy that is consistent with public law and that is necessary for the proper operation of a system of K-12 career and vocational/technical education.

20-7-403. Duties of superintendent of public instruction. The superintendent of public instruction shall supervise and coordinate the conduct of special education in the state by:

- (1) recommending to the board of public education adoption of those policies necessary to establish a planned and coordinated program of special education in the state;
- (2) administering the policies adopted by the board of public education;
- (3) certifying special education teachers on the basis of the special qualifications for the teachers as prescribed by the board of public education;
- (4) establishing procedures to be used by school district personnel in identifying a child with a disability;
- (5) recommending to districts the type of special education class or program needed to serve the child with a disability of the districts and preparing appropriate guides for developing individualized education programs;
- (6) seeking for local districts appropriate interdisciplinary assistance from public and private agencies in diagnosing the special education needs of children, in planning programs, and in admitting and discharging children from those programs;
- (7) assisting local school districts, institutions, and other agencies in developing full-service programs for a child with a disability;
- (8) approving, as they are proposed and annually after approval, those special education classes or programs that comply with the laws of the state of Montana, policies of the board of public education, and the regulations of the superintendent of public instruction;
- (9) providing technical assistance to district superintendents, principals, teachers, and trustees;
- (10) conducting conferences, offering advice, and otherwise cooperating with parents and other interested persons;
- (11) ensuring appropriate training and instructional material for persons appointed as surrogate parents that outlines their duties toward the child, limitations on what they may do for the child, duties in relation to the child's records, sources of assistance available to the surrogate parent, and the need to seek competent legal assistance in implementing hearing or appeal procedures;
- (12) ensuring that the requirements of the Individuals With Disabilities Education Act are met and that each educational program for a child with a disability administered within the state, including each program administered by any other agency, is under the general supervision of the superintendent of public instruction, meets the education standards of the board of public education, and meets the requirements of the superintendent of public instruction, reserving to the other agencies and political subdivisions their full responsibilities for other aspects of the care of children needing special education or for providing or paying for some or all of the costs of a free appropriate public education to a child with a disability within the state;
- (13) contracting for the delivery of audiological services to those children allowed by Montana law in accordance with policies of the board of public education; and
- (14) except for those children who qualify for residential services under the Montana public mental

health program pursuant to Title 53, chapter 6, contracting with a public school district or a private residential facility for the provision of a free appropriate public education for a child placed in an in-state residential facility or children's psychiatric hospital.

20-7-502. Duties of superintendent of public instruction. The superintendent of public instruction shall:

- (1) develop, administer, and supervise a program of instruction in traffic education;
- (2) establish basic course requirements in instruction for traffic education;
- (3) establish the qualifications for a teacher of traffic education;
- (4) approve teachers of traffic education when the teachers are qualified;
- (5) establish criteria for traffic education course approval based on the basic course requirements, teacher of traffic education qualifications, and the requirements of law;
- (6) approve traffic education courses when the courses meet the criteria for approval;
- (7) promulgate a policy for the distribution of the traffic education money to approved traffic education courses and annually order the distribution of the proceeds of the traffic education account in the manner required by law;
- (8) assist districts with the conduct of traffic education; and
- (9) periodically conduct onsite driver education program reviews.

20-10-112. Duties of superintendent of public instruction. In order to have a uniform and equal provision of transportation by all districts in the state of Montana, the superintendent of public instruction shall:

- (1) prescribe rules and forms for the implementation and administration of the transportation policies adopted by the board of public education;
- (2) prescribe rules for the approval of school bus routing by the county transportation committee;
- (3) prescribe the format of the contract for individual transportation and supply each county superintendent with a sufficient number of such contracts;
- (4) prescribe rules for the approval of individual transportation contracts, including the increases of the schedule rates due to isolation under the policy of the board of public education, and provide a degree-of-isolation chart to school district trustees to serve as a guide;
- (5) approve, disapprove, or adjust all school bus routing submitted by the county superintendent;
- (6) approve, disapprove, or adjust all individual transportation contracts submitted by the county superintendent;
- (7) prescribe rules for the consideration of controversies appealed to him and rule on such controversies; and
- (8) disburse the state transportation reimbursement in accordance with the provisions of law and the transportation policies of the board of public education.

COUNTY SUPERINTENDENT

20-3-205. Powers and duties. The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

- (1) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of [20-3-352](#), [20-3-353](#), and [20-3-354](#);
- (2) administer and file the oaths of members of the boards of trustees of the districts in the county in accordance with the provisions of [20-3-307](#);
- (3) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of [20-4-202](#);
- (4) act on each tuition and transportation obligation submitted in accordance with the provisions of [20-5-323](#) and [20-5-324](#);
- (5) file a copy of the audit report for a district in accordance with the provisions of [20-9-203](#);
- (6) classify districts in accordance with the provisions of [20-6-201](#) and [20-6-301](#);
- (7) keep a transcript and reconcile the district boundaries of the county in accordance with the provisions of [20-6-103](#);

- (8) fulfill all responsibilities assigned under the provisions of this title regulating the organization, alteration, or abandonment of districts;
- (9) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with [20-6-312](#) and [20-6-313](#);
- (10) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of [20-6-502](#), [20-6-503](#), [20-6-504](#), or [20-6-506](#);
- (11) process and, when required, act on school isolation applications in accordance with the provisions of [20-9-302](#);
- (12) complete the budgets, compute the budgeted revenue and tax levies, file final budgets and budget amendments, and fulfill other responsibilities assigned under the provisions of this title regulating school budgeting systems;
- (13) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of [20-9-211](#);
- (14) monthly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of [20-9-212](#), [20-9-347](#), [20-10-145](#), or [20-10-146](#);
- (15) act on any request to transfer average number belonging (ANB) in accordance with the provisions of [20-9-313](#)(3);
- (16) calculate the estimated budgeted general fund sources of revenue in accordance with the general fund revenue provisions of the general fund part of this title;
- (17) compute the revenue and compute the district and county levy requirements for each fund included in each district's final budget and report the computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;
- (18) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of [20-10-103](#), [20-10-143](#), or [20-10-145](#);
- (19) for districts that do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of [20-7-204](#) or [20-7-602](#);
- (20) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of [20-7-605](#) and otherwise comply with the textbook dealer provisions of this title;
- (21) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of [20-10-205](#);
- (22) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;
- (23) administer the oath of office to trustees without the receipt of pay for administering the oath;
- (24) keep a record of official acts, preserve all reports submitted to the superintendent under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender all records, books, supplies, and equipment to the next superintendent;
- (25) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:
 - (a) the total of the cash balances of all funds maintained by the district at the beginning of the year;
 - (b) the total receipts that were realized in each fund maintained by the district;
 - (c) the total expenditures that were made from each fund maintained by the district; and
 - (d) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and
- (26) hold meetings for the members of the trustees from time to time at which matters for the good of the districts must be discussed.

20-3-206. Additional positions. In the capacity as county superintendent, the county superintendent shall also serve as:

- (1) the chairman of the county transportation committee, as prescribed by [20-10-131](#);
- (2) an attendance officer for a district under the conditions prescribed by [20-5-104](#); and
- (3) the clerk of a joint board of trustees under the conditions prescribed by [20-3-361](#).

20-3-207. Assist trustees with school supervision. The county superintendent shall assist the trustees of any district that does not employ a district superintendent or principal with the supervision of their schools by:

- (1) visiting each school of the district at least once a school year while pupil instruction is being conducted to observe the instructional methods, ability of the teacher, progress and discipline of the pupils, and the general conditions of the school;
- (2) special visits to the schools on request of the trustees;
- (3) advising and directing teachers on instruction, pupil discipline, and other duties of the teacher;
- (4) consulting with the trustees on all school matters that may be found during the observation of the school or may otherwise come to the attention of the county superintendent.

BOARD OF TRUSTEES

1-2-113. Statutes imposing new duties on a school district to provide means of financing. (1) Any law enacted by the legislature that requires a school district to perform an activity or provide a service or facility and that will require the direct expenditure of additional funds must provide a specific means to finance the activity, service, or facility other than the existing property tax mill levy. Any law that fails to provide a specific means to finance the service or facility is not effective until a specific means of financing meeting the requirements of subsection (2) is provided by the legislature.

(2) Financing must be by means of a remission of money by the state for the purpose of funding the activity, service, or facility. Financing must bear a reasonable relationship to the actual cost of performing the activity or providing the service or facility.

(3) Legislation passed and approved may not supersede or modify any provision of this section, except to the extent that the legislation expressly does so.

(4) This section does not apply to any law under which the required expenditure of additional funds by the board of trustees is an insubstantial amount that can be readily absorbed into the budget of an existing program.

20-3-301. Election and term of office. (1) Every trustee position prescribed by this title shall be subject to election, and the term of office for each position shall be 3 years unless it is otherwise specifically prescribed by this title.

(2) The trustees shall be composed of the number of trustee positions prescribed for a district by [20-3-341](#) and [20-3-351](#). When exercising the power and performing the duties of trustees, the members shall act collectively and only at a regular or a properly called special meeting.

(3) The number of trustee positions in a district shall vary in accordance with [20-3-341](#) and [20-3-351](#) according to the type of district.

20-3-324. Powers and duties. As prescribed elsewhere in this title, the trustees of each district shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with

the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) subject to [15-10-420](#), establish the ANB, BASE budget levy, over-BASE budget levy, additional levy, operating reserve, and state impact aid amounts for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, interlocal cooperative agreement fund, and other funds as authorized by the state superintendent of public instruction in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, K-12 career and vocational/technical education, and special education parts of this title;

(18) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(19) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to the child;

(21) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except trustees from a first-class school district may share the responsibility for visiting each school in the district;

(22) procure and display outside daily in suitable weather on school days at each school of the district an American flag that measures not less than 4 feet by 6 feet;

(23) provide that an American flag that measures approximately 12 inches by 18 inches be prominently displayed in each classroom in each school of the district, except in a classroom in which the flag may get soiled. This requirement is waived if the flags are not provided by a local civic group.

(24) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in [20-5-110](#);

(25) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required by the board of public education;

(26) consider and may enter into an interlocal agreement with a postsecondary institution, as defined in [20-9-706](#), that authorizes 11th and 12th grade students to obtain credits through classes available only at a postsecondary institution; and

(27) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction.

20-9-213. Duties of trustees. The trustees of each district have the authority to transact all fiscal business and execute all contracts in the name of the district. A person other than the trustees acting as a

governing board may not expend money of the district. In conducting the fiscal business of the district, the trustees shall:

(1) cause the keeping of an accurate, detailed accounting of all receipts and expenditures of school money for each fund and account maintained by the district in accordance with generally accepted accounting principles and the rules prescribed by the superintendent of public instruction. The record of the accounting must be open to public inspection at any meeting of the trustees.

(2) authorize all expenditures of district money and cause warrants or checks, as applicable, to be issued for the payment of lawful obligations;

(3) issue warrants or checks, as applicable, on any budgeted fund in anticipation of budgeted revenue, except that the expenditures may not exceed the amount budgeted for the fund;

(4) invest any money of the district, whenever in the judgment of the trustees the investment would be advantageous to the district, either by directing the county treasurer to invest any money of the district or by directly investing the money of the district in eligible securities, as identified in [7-6-202](#), in savings or time deposits in a state or national bank, building or loan association, savings and loan association, or credit union insured by the FDIC or NCUA located in the state, or in a repurchase agreement that meets the criteria provided for in [7-6-213](#). All interest collected on the deposits or investments must be credited to the fund from which the money was withdrawn, except that interest earned on account of the investment of money realized from the sale of bonds must be credited to the debt service fund or the building fund, at the discretion of the board of trustees. The placement of the investment by the county treasurer is not subject to ratable distribution laws and must be done in accordance with the directive from the board of trustees. A district may invest money under the state unified investment program established in Title 17, chapter 6, or in a unified investment program with the county treasurer, with other school districts, or with any other political subdivision if the unified investment program is limited to investments that meet the requirements of this subsection (4), including those investments authorized by the board of investments under Title 17, chapter 6. A school district that enters into a unified investment program with another school district or political subdivision other than the state shall do so under the auspices of and by complying with the provisions governing interlocal cooperative agreements authorized under Title 7, chapter 11, and educational cooperative agreements authorized under Title 20, chapter 9, part 7. A school district either shall contract for investment services with any company complying with the provisions of Title 30, chapter 10, or shall contract with the state board of investments for investment services.

(5) cause the district to record each transaction in the appropriate account before the accounts are closed at the end of the fiscal year in order to properly report the receipt, use, and disposition of all money and property for which the district is accountable;

(6) report annually to the county superintendent, not later than August 15, the financial activities of each fund maintained by the district during the last-completed school fiscal year, on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts must be submitted not later than September 1 to the county superintendent of each county in which part of the joint district is situated.

(7) whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of public education;

(8) cause the accounting records of the district to be audited as required by [2-7-503](#); and

(9) perform, in the manner permitted by law, other fiscal duties that are in the best interests of the district.

20-10-107. Power of trustees. The trustees of any district shall have the power to:

(1) purchase or rent a school bus;

(2) purchase or rent a two-way radio for a school bus when the trustees authorize a two-way radio as standard equipment in a school bus because such bus is operated where weather and road conditions may constitute a hazard to the safety of the school pupil passengers;

(3) provide for the operation, maintenance, and insurance of a school bus or a two-way radio owned or rented by the district; or

(4) contract with a private party for the transportation of eligible transportees, and such contract shall not exceed the term of 5 years.

20-10-204. Duties of trustees. (1) The trustees of any district offering school food services may:

(a) enter into contracts with the superintendent of public instruction for the purpose of obtaining funds, supplies and equipment, food commodities, and facilities necessary for the establishment, operation, and maintenance of the school food services;

(b) sell food to the pupils and adults participating in the school food services in accordance with the policies of the superintendent of public instruction;

(c) accept any gift for use of the school food services;

(d) allocate federal funds received in lieu of property taxation to the school food services fund in accordance with the provisions of [20-10-205](#); and

(e) adopt such policies for the operation of school food services as are consistent with the regulations of the superintendent of public instruction and with the laws of Montana.

(2) When the trustees of any district offer school food services, they shall establish a school food services fund for the deposit of proceeds from the sale of food, gifts, and other moneys specified in this section and for the expenditure of such moneys in support of the school food services.